

CHAPTER NO. 126

HOUSE BILL NO. 508

By Representatives Odom, Bowers, Pleasant, Miller, Towns

Substituted for: Senate Bill No. 625

By Senators Haynes, Miller, Crowe, Kurita

AN ACT to amend Tennessee Code Annotated, Title 47, Chapter 18, Part 1 relative to prizes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 47, Chapter 18, Part 1, is amended by adding the following new section:

Section __. As used in this section unless the context otherwise requires:

(1) "Prize" means a gift, award, incentive promotion, or other item or service of value. "Prize" includes, but is not limited to, anything of value that is offered or awarded to a participant in a real or purported contest, competition, sweepstakes, puzzle, drawing, incentive offer, premium promotion or similar promotional offer by whatever name the company uses, scheme, plan, or other selection process;

(2) "Retail value" of a prize includes:

(A) a price at which the sponsor can substantiate that a substantial number of the goods or services which constitute the prizes have been sold to the public in Tennessee in the preceding year; or

(B) if the sponsor is unable to satisfy the requirement in subparagraph (A), then no more than one and one-half (1.5) times the amount the sponsor paid for the prize in a bona fide purchase from an unaffiliated seller.

(3) "Sponsor" includes a corporation, partnership, limited liability company, sole proprietorship, or natural person, that requires a person in Tennessee to pay the sponsor money as a condition of awarding the person a prize, or as a condition of allowing the person to receive, use, compete for, or obtain information about a prize, or that creates the reasonable impression that such a payment is required.

(b) No sponsor shall require a person in Tennessee to pay the sponsor money as a condition of awarding the person a prize, or as a condition of allowing the person to receive, use, compete for, or obtain information about a prize, nor shall a sponsor use any solicitation that creates the reasonable impression that a payment is required, unless the person has first received a written prize notice containing the information required in subsections (c) and (d).

(c) A written prize notice must contain each of the following:

(1) the true name or names of the sponsor and the address of the sponsor's actual principal place of business;

(2) the retail value of each prize the person receiving the notice has been selected to receive or may be eligible to receive;

(3) a statement of the person's odds of receiving each prize identified in the notice;

(4) any requirement that the person pay shipping or handling fees or any other charges to obtain or use a prize, including the nature and amount of the charges;

(5) if receipt of the prize is subject to a restriction, a statement that a restriction applies, and a description of the restriction;

(6) any limitations on eligibility; and

(7) if a sponsor represents that the person is a "winner," is a "finalist," has been "specially selected," is in "first place," or is otherwise among a limited group of persons with an enhanced likelihood of receiving a prize, the written prize notice must contain a statement of the maximum number of persons in the group or purported group with this enhanced likelihood of receiving a prize.

(d) The information required by subsection (c) must be presented in the following form:

(1) the retail value and the statement of odds required under subsection (c), subdivisions (2) and (3), must be stated in immediate proximity to each identification of a prize on the written notice, and must be in the same size and boldness of type as the reference to the prize;

(2) the statement of odds must include for each prize, the total number of prizes to be given away and the total number of written prize notices to be distributed. The number of prizes and written prize notices must be stated in Arabic numerals. The statement of odds must be in the following form:

" ____ (number of prizes) out of ____ notices distributed".

(3) a statement required under subsection (c), subdivision (7), must appear in immediate proximity to each representation that the person is among a group of persons with an enhanced likelihood of receiving a prize, and must be in the same size and boldness of type as the representation.

(e) A sponsor who represents to a person that the person has been awarded a prize shall, not later than thirty (30) days after making the representation, provide the person with the prize, or with a voucher, certificate, or other document giving the person the unconditional right to receive the prize, or shall provide the person with either of the following items selected by the person:

(1) any other prize listed in the written prize notice that is available and that is of equal or greater value; or

(2) the retail value of the prize, as stated in the written notice, in the form of cash, a money order, or a certified check.

(f) Nothing in this section creates liability for acts by the publisher, owner, agent, or employee of a newspaper, periodical, radio station, advertising medium arising out of the publication or dissemination of a solicitation, notice, or promotion governed by this section, unless the publisher, owner, agent, or employee had knowledge that the solicitation, notice, or promotion violated the requirements of this section, or had financial interest in the solicitation, notice, or promotion governed by this section.

(g) The provisions of this section do not apply to:

(1) Advertising and promotional plans of persons covered by the provisions of the Tennessee Time-Share Act of 1981, compiled in Title 66, Chapter 32, Part 1, and the Membership Camping Act, compiled in Title 66, Chapter 32, Part 3; and

(2) Retail promotions which offer savings on consumer goods or services, including "one-cent sales", "two-for-the-price-of-one sales", or a manufacturer's "cents-off" coupons, when the consumer accepts the offer on-site.

The burden of proving these exemptions is upon the person claiming the exemption.

(3) This section does not apply to solicitations or representations in connection with the sale or purchase of books, recordings, videocassettes, periodicals, and similar goods through a membership group or club which is regulated by the Federal Trade Commission or to contractual plans or arrangements such as continuity plans, subscription arrangements, standing order arrangements, supplements, single sales, and series arrangements, under which the seller periodically ships merchandise to a consumer who has consented in advance to receive the merchandise on a periodic basis.

(h) Notwithstanding any other provision of law, a violation of this section constitutes an unfair deceptive act or practice and, without limiting the scope of § 47-18-104, shall be punishable by a civil penalty of a minimum of one thousand dollars (\$1,000) to a maximum of ten (10) times the amount collected or requested by the offeror for each violation.

SECTION 2 This act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: May 3, 1999


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES


JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 12th day of May 1999


DON SINDQUIST, GOVERNOR